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Dr. Roy E. Crabtree
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National Oceanic and Atmospheric Administration
263 13th Avenue South
St. Petersburg, Florida 33701

Subject: EPA NEPA Comments on NOAA DEIS for "Comprehensive Ecosystem-Based Amendment 1 [CE-BA 1] for the South Atlantic Region; NC, SC, GA and Eastern FL; CEQ# 20090247; ERP# NOA-E91027-00

Dear Dr. Crabtree:

Consistent with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) has reviewed the National Oceanic and Atmospheric Administration's / National Marine Fisheries Service's (NOAA/NMFS) Draft Environmental Impact Statement (DEIS) for the subject "CE-BA 1" or "Amendment 1" for the South Atlantic Region.

The CE-BA 1 is relevant for federal waters up to the 200 nautical mile (nm) limit in the Atlantic Ocean offshore North Carolina, South Carolina, Georgia and eastern Florida to Key West. Deepwater coral habitat is generally found at water depths up to 1,000 meters. The four actions in Amendment 1 are (excerpted from page 1-1):

- Amend the Coral, Coral Reefs, and Live-Hardbottom Habitat FMP to establish Deepwater Coral Habitat Areas of Particular Concern (CHAPCs) and prohibit the use of bottom damaging fishing gear.
- Create a "Fishery Access Area" (SFAA) within the proposed CHAPCs.
- Create "Allowable Golden Crab Fishing Areas" [AGAs] within the proposed CHAPCs.
- Amend and Golden Crab FMP to require vessel monitoring.

CE-BA 1 also amends several FMPs to include Essential Fish Habitat (EFH) spatial information. These FMPs are the Coral, Coastal Migratory Pelagics, Shrimp, Golden Crab, Spiny Lobster, Dolphin Wahoo, and Snapper Group FMPs.

EPA clearly supports the protection of seafloor habitats from bottom-tending fishing gear such as trawls, as well as designating these areas as "no-anchor" areas. Since commercial trawling activities are typically repeated along fishing grounds,

they could have severe environmental impacts to deepwater coral and other relief areas. Gear damage to such deepwater habitats has consequences beyond habitat destruction since once impacted, cold water habitats require longer restoration times than warmer/shallower habitats. Furthermore, we understand that the deepwater coral habitats of concern are still pristine and can therefore still be protected from impacts to avoid any need for such longer-termed restoration. The proposed actions of Amendment 1 are therefore precautionary in nature since current fishing gear used in these areas is either acceptable (e.g., hook-and-line gear) or is not expected to be damaging (e.g., gear used for harvesting wreckfish, which is also scheduled for impact verification studies).

Since several species are involved for Amendment 1, EPA is pleased that NOAA/NMFS is embracing an ecosystem-based approach to protect deepwater corals and to amend associated FMPs for several fishery species. Although considerably more complicated, it is clear that ecosystem-based studies are much more beneficial to an affected ecosystem when compared to only regulating a target fishery species within that ecosystem without regard to interactive effects, such as harvest effects on predator-prey relationships and gear conflicts.

EPA offers the following comments on the DEIS for consideration by NOAA/NMFS in the development of the Final EIS (FEIS). We have emphasized the alternatives considered for the four actions presented.

Action 1 (***Amend the Coral, Coral Reefs, and Live/Hardbottom Habitat FMP to establish Deepwater Coral Habitat Areas of Particular Concern (CHAPCs)***).

- Alternative 1 (*No Action*) – EPA does not recommend the No Action Alternative for Action 1, i.e., that CHAPCs would not be established. Although current fishing techniques for golden crab, rock shrimp, royal red shrimp and wreckfish do not or apparently do not damage deepwater coral habitat, the establishment of CHAPCs would benefit deepwater coral habitat by prohibiting, as a precaution, possession of all bottom damaging gear within the designated CHAPCs. Other gear such as hook and line would not be prohibited. Continued use of gear currently used to harvest wreckfish in the area would also be allowed. Gear-effects are expected to be acceptable but are unknown, and therefore would be verified by separate amendment.[1] It is noted that bottom longline gear is already prohibited for the wreckfish fishery.

- Alternative 2 (*Preferred by NOAA/NMFS*) – This alternative would establish one or more deepwater coral CHAPCs under sub-alternatives 2a, 2b, 2c, 2d and/or 2e. EPA supports the DEIS-preferred creation of CHAPCs, but will defer to the

[1] The FEIS should discuss when such studies and amendment are expected. It would have been preferable for such studies to already have been completed so that their results could have been incorporated in the present Amendment 1 rather than potentially requiring a subsequent modification of the Amendment 1, should the current wreckfish harvesting technique be determined to be damaging to deepwater coral habitat.

expertise of NOAA/NMFS as to their specific locations along the western Atlantic coastline (pg. 2-2). We believe, however, that these locations should maximize the protection of quality deepwater coral and other seafloor habitats such as hardbottom mounds. Based on Table 2-1, all five subalternative sites are currently preferred by NOAA/NMFS.

Action 2 (***Create a "Shrimp Fishery Access Area" (SFAA) within the proposed Stetson Reefs, Savannah and East Florida Lithoherms, and Miami Terrace (Stetson-Miami Terrace) CHAPC boundaries***)).

- Alternative 1 (*No Action*) – The no action alternative would not establish an SFAA site with certain CHAPCs designed to help offset social and economic impacts to shrimpers that would no longer be allowed to fish in designated CHAPC deepwater coral areas per the above preferred Alternative 2 of Action 1. EPA does not oppose limited CHAPC access areas if NOAA/NMFS finds societal hardships would be significant to shrimp fishers affected by the designation of CHAPCs as long as the location of the SFAA would not substantively impact deepwater coral habitat intended for protection by Amendment 1. Under those conditions, EPA would not oppose selection of an action alternative over the no action alternative for Action 2.

- Alternative 2 (*Preferred by NOAA/NMFS*) – This alternative would designate an SFAA within the Stetson-Miami Terrace CHAPCs to allow the continuance of rock (and unregulated royal red) shrimp fishing in traditional fishing grounds. Alternative 2 appears to be a compromise alternative requested by the shrimp industry (pg. 2-11). While continued shrimping in "traditional areas" would be beneficial to the industry and still may be acceptable for the purposes of Amendment 1, the FEIS should further discuss any long-termed bottom impacts to these traditional shrimping grounds from past/current shrimp trawling. If there are no substantive impacts to the seafloor – especially relief areas – such an offset could be helpful to affected shrimpers. Overall, however, it appears that the rock shrimp fishery is small such that societal impacts would correspondingly also be small, even though economic and any Environmental Justice (EJ)[2] effects on fishers should be considered by NOAA/NMFS.

- Alternative 3 (*SFAA Areal Expansion*) – Alternative 3 would extend the area of the SFAA to the east, which includes known and "highly probable low- and high-relief deepwater coral habitats", and would allow expansion of the royal red shrimp fishery into non-traditional areas. EPA does not support Alternative 3 since it would encroach into vulnerable coral habitat. Moreover, it is unclear why such an action alternative is offered in an amendment intended to establish CHAPCs to protect deepwater coral habitat, i.e., is this alternative "reasonable and feasible" and consistent with amendment purpose and need (pg. 1-17)?

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[2] In its social and economic effects discussions, the DEIS does not appear to address any potential EJ effects on fishers that may be impacted by CHAPC designations. The FEIS should address this based on disclosed fisher EJ information.

Action 3 (***Create "Allowable Golden Crab Fishing Areas" [AGAs] within the proposed Stetson Reefs, Savannah and East Florida Lithoherms, and Miami Terrace (Stetson-Miami Terrace) CHAPC and Pourtales Terrace CHAPC boundaries***).

- Alternative 1 (*No Action*) – Similar to Action 2, the establishment of AGAs could be helpful to golden crab fishers if NOAA/NMFS finds societal hardships would be significant to fishers affected by the designation of CHAPCs and if the location of the crab fishing grounds would not substantively impact deepwater coral habitat proposed for protection by Amendment 1. Under these conditions, EPA would not oppose an action alternative over the no action alternative for Action 3.

- Alternative 2 (*Preferred by NOAA/NMFS*) – This alternative would establish one or more AGAs within designated CHAPCs under sub-alternatives 2a, 2b and 2c. Although EPA believes the AGAs – like the proposed SFAA – would be beneficial to the industry, since continued commercial crabbing in the area would be allowed there, and could still potentially be manageable within the purposes of Amendment 1, we will defer to the expertise of NOAA/NMFS as to the specific locations of the AGAs. However, these AGA sites should still avoid quality deepwater coral and other habitats such as hardbottom mounds consistent with the intent of Amendment 1. All three subalternative sites are currently preferred by NOAA/NMFS (pg. 2-12).

  Since the harvest of the golden crab is currently not regulated (pg. 1-9), the FEIS should further discuss the status of the golden crab stock in terms of its optimum yield (OY). That is, should AGAs be established for a fishery that is potentially without a recent stock assessment or that may already be over-exploited? Moreover, from an ecosystem perspective, what is the role of the golden crab in the deepwater ecosystem and how would its continued harvest or exploitation impact its predator-prey relationships?

- Alternative 3 (*AGA Areal Expansion*) – This alternative would expand the AGAs into traditional shrimping grounds. The FEIS should discuss if there is "reason to believe" that harvestable stocks of golden crab would coexist on the shrimping ground habitat. Accordingly, we understand that this expansion would not necessarily be meaningful to the golden crab fishery since golden crabs are typically found in deeper waters than the shrimping grounds in the proposed AGA expansions. Crab and shrimp fishery gear conflicts could also result if their fishing grounds were to overlap. The FEIS should further discuss the value of this alternative from a NEPA, fishery, and deepwater coral habitat protection perspective.

Action 4 **(Amend the Golden Crab FMP to require vessel monitoring).**

- Alternative 1 (*No Action*) – The no action alternative would not require a Vessel Monitoring System (VMS) for the surveillance of fishing vessels owned by permitted golden crab fishers – specifically to ensure that all crabbing is limited to

the AGA access areas and outside deepwater coral habitat. The DEIS offers that the VMS approach would not provide information on the effects of gear on deepwater coral habitat, that it would not have any positive or negative effects on the golden crab resource, that VMS alone is not a good enforcement tool for this resource, and that VMS would not prevent damage to deepwater coral habitat. We agree that requiring VMS alone would not ensure that deepwater coral habitat would not be impacted. However, it would monitor the locations of vessels specifically permitted to fish for golden crabs within the AGAs (Alt. 2) and/or any vessel with a limited access golden crab permit (Alt. 3), to help prevent gear damage to this still pristine deepwater coral habitat.

For Action 4, we recommend that the NOAA/NMFS decisionmaking process regarding a VMS requirement should consider several factors. These are: 1) is there "reason to believe" that violations outside the AGAs would occur, 2) past success of VMSs in other fisheries, 3) cost and funding for VMS, 4) fisher and fishery impacts, 5) number/type of permitted vessels required to install VMS, and notably 6) that potential damage to deepwater corals (damage that may be avoidable by VMS) would only be restored slowly due to the cold water environment such that current protection is paramount.

- Alternative 2 (*VMS for AGA Vessels*) – Alternative 2 would require a VMS for all vessels holding permits for golden crab fishing within the designated AGAs using approved crustacean traps. As such, this alternative would require a VMS for only the subset of vessels that are permitted to fish for golden crab within AGAs.

- Alternative 3 (*VMS for All Vessels*) – Alternative 3 is broader than 2 since it also requires a VMS for all vessels permitted for limited access fishing of golden crab. This option has the advantage of more fully monitoring all vessels permitted for harvesting golden crabs within the South Atlantic Fishery Management Council's jurisdiction. It should be noted, however, that even if all permitted vessels were required to have a VMS, unpermitted vessels (which also would not be monitored by VMS) could potentially still illegally fish deepwater coral habitat and potentially impact it – despite the fact that all permitted and VMS-equipped vessels were being monitored. Nevertheless, requiring VMS on permitted vessels under Alternatives 2 or 3 would reduce the probability of fishing outside the AGAs and in deepwater coral habitat impacts, and therefore its potential impacts. Alternative 3 would minimize the probability of non-compliance.

Summary

EPA fully supports protection of deepwater coral habitat and the application of the ecosystem-based approach to fishery management. We therefore fully support CE-BA 1 and rate the DEIS as "LO" (Lack of Objection). Overall, we concur with the establishment of CHAPCs to protect the currently pristine deepwater coral habitat along the east coast and defer to the expertise of NOAA/NMFS as to where best these closed areas should be located to maximize protection. Within the CHAPCs, however, the

designation of SAAF and AGA sites for continued shrimping and crabbing on traditional fishing grounds as access areas may be reasonable to offset fisher societal (economic and potential EJ) impacts relative to CHAPC designations. Nevertheless, we believe that the FEIS should verify that past and continued fishing in these traditional areas has or is not expected to cause impacts to coral or other seafloor relief areas, and that the continued or increased harvest of the target shrimp/crab species at these sites is sustainable in terms of their OY. However, potential areal expansions into seafloor relief areas by the SAAF (Alt. 3/ Act. 2) and/or overlapping crabbing in traditional shrimping grounds by the AGAs (Alt. 3/Act. 3) – with apparently minimal benefit to crabbers – is not recommended by EPA without additional FEIS information. In regard to possibly requiring a VMS (Act. 4) for vessels fishing for golden crabs, we recommend that NOAA/NMFS consider several factors. These are: 1) is there "reason to believe" that violations outside the AGAs would occur, 2) past success of VMSs in other fisheries, 3) cost and funding for VMS, 4) fisher and fishery impacts, 5) number/type of permitted vessels that would need to install VMSs, and notably 6) that potential damage to deepwater corals (damage that may be avoidable by VMS) would only be restored slowly due to the cold water environment such that current protection is paramount.

Accordingly, EPA agrees with Alternative 2 for Action 1 and Alternative 2 for Actions 2 and 3 if impacts to coral and other seafloor habitat are avoided in the SAAF and AGA sites, fisher societal issues warrant establishment of such access areas, and shrimp and crab stocks are sustainable and can allow such fishing. EPA's preferences are consistent with the preferred alternatives selected by NOAA/NMFS in the DEIS; moreover, EPA will defer to the expertise of NOAA/NMFS regarding their DEIS-selected preferred locations for the SAAF and AGA sites. With regard to Action 4, we believe that a VMS requirement would increase the protection of deepwater corals if there is reason to believe that there is a need (i.e., that golden crab fishers will try to illegally fish outside the AGAs) and if, to a lesser degree, it is cost-effective (i.e., NOAA would be willing to fund the VMSs for the permitted vessels to reduce fisher economic impacts). However, a VMS requirement would not necessarily prevent all deepwater coral impacts since unmonitored/unpermitted vessels could still illegally fish in deepwater coral habitat.

We appreciate the opportunity to review the DEIS. Should you have questions regarding these comments, feel free to contact Chris Hoberg of my staff at 404/562-9619 or hoberg.chris@epa.gov.

Sincerely,

Heinz J. Mueller, Chief
NEPA Program Office
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cc: Dr. Paul N. Doremus – NEPA Coordinator (NOAA): Silver Spring, MD